

D.P.U. 93-DS-42

Adjudicatory hearing in the matter of a possible violation of General Laws Chapter 82, Section 40, by G.L. Wey Engineering Consultants

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APPEARANCES: G.L. Wey Engineering Consultants  
Columbus Avenue  
Oak Bluffs, Massachusetts 02557  
FOR: G.L. WEY ENGINEERING CONSULTANTS  
Respondent

Gail Soares, Dig-Safe Investigator  
Division of Pipeline Engineering and Safety  
Department of Public Utilities  
Boston, Massachusetts 02202  
FOR: THE DIVISION OF PIPELINE  
ENGINEERING AND SAFETY

## I. INTRODUCTION

On November 11, 1993, the Division of Pipeline Engineering and Safety ("Division") of the Department of Public Utilities ("Department") issued a Notice of Probable Violation ("NOPV") to G.L. Wey Engineering Consultants ("Respondent"). The NOPV stated that the Division had reason to believe that the Respondent performed excavations on or about October 4, 1993, on Otis Bassett Road, West Tisbury, in violation of G.L. c. 82, § 40 ("Dig-Safe Law"). The Respondent allegedly failed to exercise reasonable precaution, causing damage to an underground service line operated by Commonwealth Electric Company. The NOPV also stated that the Respondent had the right to either appear before a Department hearing officer in an informal conference on December 2, 1993 or send a written reply to the Department by that date.

On November 22, 1993, pursuant to 220 C.M.R. § 99.06 (1), the Respondent submitted a written response disputing the allegations in the NOPV. In a letter dated December 2, 1993, the Division informed the Respondent of its determination that the Respondent had violated the Dig-Safe Law and imposed a \$200 civil penalty on the Respondent. The Division's finding was based on the Respondents failure to render proper notification prior to excavation. On February 24, 1993, the Respondent requested an adjudicatory hearing pursuant to 220 C.M.R. § 99.07(3).

After due notice, an adjudicatory hearing was scheduled for February 28, 1994 pursuant to the Department's procedures for enforcement under 220 C.M.R. § 99.00 et seq. On February 28, 1994, the Department received a letter from the Respondent requesting a postponement for medical reasons. On April 12, 1994, the Department sent notice of the rescheduled hearing for May 6, 1994 to the Respondent.

An adjudicatory hearing was held on May 6, 1994 pursuant to 220 C.M.R. § 99.00 et seq. Gail Soares, a Dig-Safe investigator, appeared on behalf of the Division. No one appeared on behalf of the Respondent. After waiting 30 minutes the hearing commenced. All exhibits offered were admitted into evidence.

## II. STANDARD OF REVIEW

According to Department precedent, if a Respondent fails to appear at a properly noticed adjudicatory hearing, the Department has reason to dismiss the Respondent's case on grounds "that the Respondent has failed to pursue its claim", therefore reinstating the prior determination of the Division. Signal Construction Company v. Bay State Gas Company, D.P.U. 89-DS-95 (1990); Paul Marusare v. Berkshire Gas Company, D.P.U. 87-DS-85 (1988); Lynch v. Commonwealth Gas Company, D.P.U. 86-DS-70 (1987).

## III. ANALYSIS AND FINDINGS

In this case, the Department has followed due process as defined in 220 C.M.R. § 99.00 et seq. by scheduling and holding an informal conference, issuing a remedial order, informing the Respondent of its right to an adjudicatory hearing, by holding an adjudicatory hearing as defined in G. L. c. 30A, and providing timely notice of that hearing to the Respondent. In that notice, the Department informed the Respondent that a failure to attend the hearing might result in dismissal of the appeal and enforcement of the prior informal decision, but the Respondent still failed to appear at the scheduled hearing or contact the Department. Accordingly, because the Respondent failed to appear at the scheduled adjudicatory hearing and failed to contact the Department before or after that hearing, the Department finds that the Respondent has failed to pursue its claim.

IV. ORDER

Accordingly after due notice and consideration, the Department

FINDS: That G.L. Wey Engineering Consultants failed to pursue its claim, and it is

ORDERED: That G.L.Wey Engineering Consultants, shall pay a civil penalty of \$200 to the Commonwealth of Massachusetts, within 30 days of the date of this order.

By Order of the Department,

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Kenneth Gordon, Chairman

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Barbara Kates-Garnick,

Commissioner

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Mary Clark Webster, Commissioner